IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MYMAIL, LTD.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. ________________
	§	
CONDUIT LTD.,	§	
CONDUIT INC.,	§	
CONDUIT USA INC.,	§	
CLIENTCONNECT LTD.,	§	
CLIENTCONNECT INC., and	§	
Defendants.	§	

COMPLAINT AND JURY DEMAND

Plaintiff MyMail, Ltd. files its Original Complaint and Jury Demand against Conduit Ltd., Conduit Inc., Conduit USA Inc., ClientConnect Ltd., and ClientConnect Inc. (collectively "Defendants" or "Conduit"), and alleges as follows:

PARTIES

1. Plaintiff MyMail, Ltd. ("MyMail") is a limited partnership organized under the laws of the State of Texas with its principal place of business in Athens, Henderson County, Texas.

2. Defendant Conduit Ltd. is a company formed under the laws of Israel[1] with its principal place of business at 5 Golda Meir Street, Ness-Ziona, Israel.[2] Conduit Ltd. may be served with process by serving its registered agent for service, Reena A. Jadhav, 1800 Bridge

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[1] Perion Network Ltd., Form 6-K, Report No. 2 for the Month of October 2013, Commission File No.: 000-51694, filed with the United States Securities and Exchange Commission, at Proxy, at p. 1, relevant excerpts attached as **Exhibit "A"** (hereinafter "Perion 10/15/13 Form 6-K").

[2] *Conduit's "Locations" Webpage*, http://www.conduit.com/aboutus/locations, 11/12/13 printed copy attached as **Exhibit "B**."

Pkwy, Redwood Shores, CA 94065. Defendant Conduit Ltd.'s agent in the Unites States is Defendant Conduit Inc.[3] (now known as ClientConnect Inc.) so Defendant Conduit Ltd. can also be served by serving its registered agent for service Jodi Chall, 950 Tower Lane, Suite 1788, Foster City, CA 94404.

3. Defendant Conduit Inc. is an entity located at 950 Tower Lane, Suite 1788, Foster City, CA 94404. Conduit Ltd.'s webpage lists Conduit Inc. as its US office located in Foster City, California.[4] Defendant Conduit Inc. may be served with process by serving its registered agent Jodi Chall, 950 Tower Lane, Suite 1788, Foster City, CA 94404 or registered agent Reena A. Jadhav, 1800 Bridge Pkwy, Redwood Shores, CA 94065.

4. Defendant Conduit USA Inc. is a Delaware corporation with its principal place of business located at 950 Tower Lane, Suite 1788, Foster City, CA 94404. Pursuant to filings made with the Delaware Division of Corporations on August 14, 2013[5] and the Virginia State Corporation Commission on November 5, 2013,[6] Conduit USA Inc. has changed its name to ClientConnect Inc. Conduit USA Inc. may be served with process by serving it registered agents: PHS Corporate Services, Inc., 1313 N. Market Street, Suite 5100, Wilmington, Delaware 19801;[7] VCorp Agent Services, Inc., 250 Browns Hill Court, P.O. Box 353, Midlothian, Virginia 23113;[8] or Jodi Chall, 950 Tower Lane, Suite 1788, Foster City, CA 94404.[9]

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[3] *Conduit's "Locations" Webpage*, http://www.conduit.com/aboutus/locations, 11/12/13 printed copy attached as **Exhibit "B."**

[4] *Id.*

[5] Delaware Department of State: Division of Corporations, "*Entity Details for ClientConnect, Inc.*," at Filing History, 11/13/13 Search Results attached as **Exhibit "C"** (hereinafter "DE ClientConnect Inc").

[6] Commonwealth of Virginia State Corporation Commission, *Old Name Inquiry for ClientConnect, Inc.*, 11/13/13 Search Results attached as **Exhibit "D**."

[7] *See DE ClientConnect Inc.*, at Registered Agent Information **Exhibit "C".**

[8] Commonwealth of Virginia State Corporation Commission, "*Corporate Data Inquiry for ClientConnect Inc.*" 11/13/13 Search Results attached as **Exhibit "D."**

[9] California Secretary of State, "*Business Entity Detail for CLIENTCONNECT, INC*", 11/13/13 Search Results attached hereto as **Exhibit "E**," *with* Commonwealth of Virginia State Corporation Commission,

5. Defendant ClientConnect, Ltd. is a newly formed Israeli entity[10] located at 5 Golda Meir Street, Ness-Ziona, Israel. To the extent Conduit Ltd. intends to spin-off its designated operations, assets and liabilities [the "ClientConnect business"] to ClientConnect Ltd.[11] as of December 31, 2013,[12] prior service upon Defendant Conduit Ltd. should be sufficient to place Defendant ClientConnect Ltd. on notice.

6. Defendant ClientConnect, Inc. is a Delaware corporation with its principal place of business located at 950 Tower Lane, Suite 1788, Foster City, CA 94404; and may be served with process by serving its registered agents PHS Corporate Services, Inc., 1313 N. Market Street, Suite 5100, Wilmington, Delaware 19801; VCorp Agent Services, Inc., 250 Browns Hill Court, P.O. Box 353, Midlothian, Virginia 23113; or Jodi Chall, 950 Tower Lane, Suite 1788, Foster City, CA 94404.[13]

JURISDICTION AND VENUE

7. This action for patent infringement arises under the patent laws of the United States of America, Title 35 of the United States Code. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) over the claims pled herein.

8. Commencing operations in March of 2005, Defendant Conduit Ltd. established "Conduit USA Inc. (Conduit Inc.) in Delaware … [which] supports the Company's business

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"*Officers/Directors and Principal Office Inquiry for ClientConnect Inc.*" 11/13/13 Search Results attached as **Exhibit "D."**

[10] "ClientConnect Ltd., a [new] company formed under the laws of Israel." Perion 10/15/13 Form 6-K, at A – 1 "THIS SHARE PURCHASE AGREEMENT" & RECITALS (A), **Exhibit "A."**

[11] "Conduit [Ltd.] has decided to spin-off the ClientConnect Business to ClientConnect [Ltd.], a newly formed company to be owned by the Conduit Shareholders….[They] have entered into a Split Agreement… pursuant to which the entire activities and operations, *and related assets and liabilities,* of the ClientConnect Business *will be transferred to* ClientConnect…." Perion 10/15/13 Form 6-K, at A – 1 RECITALS (B) (emphasis added), **Exhibit "A."**

[12] *Id.*, at Proxy, p. 1, **Exhibit "A."**

[13] *See supra* notes 3-7, at p. 2, and the referenced **Exhibits Nos. "C, D, & E."**

activities in the United States" in 2008.[14] In Exhibit "A," Conduit Ltd. refers to Defendant Conduit USA Inc. as "Conduit Inc."[15] As previously discussed, Conduit USA Inc.'s name has recently been changed to ClientConnect Inc.[16] Therefore, Defendants Conduit Inc., Conduit USA Inc., and ClientConnect Inc. are all the same entity (hereinafter collectively referred to as "CC USA").[17]

9. Defendant Conduit Ltd. admittedly operates CC USA to support its United States business activities. In addition, on its webpage, Conduit Ltd. holds itself out as "*a global company*' [singular] with offices in the US and Israel," and lists its US office as located at Conduit Inc., 950 Tower Lane, Suite 1788, Foster City, CA 94404.[18] Accordingly, Defendant Conduit Ltd. operates CC USA as its alter ego.

10. Recently, Defendant Conduit Ltd. signed a split agreement pursuant to which it intends to spin off its ClientConnect business to ClientConnect Ltd. -- a newly formed Israeli company.[19] This new entity is purportedly owned by the shareholders of Conduit Ltd. in the same proportion as their ownership interest (shares) in Conduit Ltd. Conduit Ltd. expects the split to occur on December 31, 2013.[20] Conduit Ltd. describes its 'ClientConnect business' as follows:

> [A] proprietary cloud-based toolbar generating platform (the "platform"), which allows online publishers to create, implement and distribute web browser toolbars and other software products and services to targeted audiences, and to subsequently administer such toolbars. The platform includes software applications and tools that provide comprehensive solutions for the full

[14] *Perion 10/15/13 Form 6-K*, at F-9, note 1a **Exhibit "A."**
[15] *Id*. at p. 8.
[16] *See supra* at p. 1-2, ¶¶3-4 and accompanying notes & referenced exhibits.
[17] *See supra* notes 3-7, at p. 2, and referenced **Exhibits Nos. "C, D, & E."**
[18] *Conduit's "Locations" Webpage* **Exhibit "B."**
[19] *Perion Form 6-K*, at Proxy, p. 1 **Exhibit "A.".**
[20] *Id.*, **Exhibit "A,"** at Proxy, p. 83.

> customization of the toolbar graphical user interface, as well as additional features, tools and services….[21]

By distributing customized toolbars generated using the Conduit platform to publishers, Defendants are able to funnel Internet searches made by end-users who have installed these publishers' toolbars to search providers with whom Conduit contracts.[22] It is this capability that generates the "vast majority of its revenues" associated with the ClientConnect business.[23] Such revenues "have historically been concentrated within the U.S. market."[24] Conduit currently has 260,000 online publishers, who have distributed these customized toolbars to over 250 million users around the world.[25]

11. Through these activities, Conduit has regularly and deliberately conducted business in the forum, and has purposefully availed itself of privileges and protections of Texas law. For instance, one of Conduit's few publicly identified "big brand" online publishers is Travelocity, which is headquartered in Texas.[26] In addition, the customized toolbars offered by Conduit's publishers, like Travelocity, have been installed and are utilized by millions of Internet users, many of whom are located throughout the State of Texas and in this judicial district. Because Defendants regularly and deliberately engaged in and continue to engage in activities that result in the using, selling, offering for sale, and/or importing of toolbars that are made and maintained using the infringing process in the State of Texas and in this judicial district, this Court has also personal jurisdiction over the Defendants.

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391.

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[21] *Id.*, **Exhibit "A,"** at Proxy, p. 74.
[22] *Id.*, **Exhibit "A"**. at Proxy, p. 74.
[23] *Id.*, **Exhibit "A,"** at Proxy, p. 23.
[24] *Id.*, **Exhibit "A,"** at Proxy, p. 28.
[25] *Id.*, **Exhibit "A,"** at Proxy, p. 74; *Conduit "About Us" Webpage ("The Story|Conduit")*, 11/12/13 printed copy attached as Exhibit "F" (hereinafter "The Story|Conduit"). Found at: http://www.conduit.com/aboutus.
[26] *"The Story|Conduit"* **Exhibit "F."**

U.S. PATENT NO. 8,275,863

13. Inventors Thomas Selgas, Michael Massing, and John Gmuender (the "MyMail Inventors") worked together to develop NEAT!™ Software (hereinafter "NEAT!™ Software") to provide Internet Service Providers, Content Providers (i.e., 'publishers'), and Affinity Marketers (i.e. 'Advertisers') with a suite of tools to enhance an end-user's Internet experience. NEAT!™ Software offered among other features in its suite of Internet tools (e.g., a 'platform') the ability to customize a toolbar, web browser, and homepage in a way that would allow businesses, sometimes referred to as content providers or publishers, transparently to update related content and to track their end-user's activities as well in order to collect quality demographic information about the end-user that could then be provided to affinity marketers, also known as advertisers.[27]

14. The MyMail Inventors filed a provisional patent application with the United States Patent and Trademark Office ("USPTO") on June 19, 1997 that described the various unique features of their NEAT!™ Software.[28] A U.S. application, claiming priority to the provisional application, entitled "Method and Apparatus for Providing Fungible Intercourse over a Network, was then filed.[29] From these and related patent applications, the USPTO has granted various patents to the assignee MyMail, including one, entitled "Method of Modifying a Toolbar," which issued as U.S. Patent No. 8,275,863 on September 25, 2012 (the "'863 patent"). A true and correct copy of the '863 patent is attached hereto as Exhibit H.

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[27] *See Appendix C* to U.S. Patent Application No. 09/100,619, filed with the PTO on June 19, 1998, relevant excerpts attached as **Exhibit "G."**
[28] U.S. Provisional Application No. 60/050,186, filed with the PTO on June 19, 1997.
[29] U.S. Patent Application No. 09/100,619, filed with the PTO on June 19, 1998.

Conduit's Invention

15. Several years later, on February 9, 2005, inventors Ronen Shilo ("Shilo"), Dror Erez ("Erez"), Gabriel Bilezyk ("Bilezyk"), Ehud Zagury ("Zagury"), and Guy Malachi ("Malachi") filed a patent application with the USPTO, describing a similar invention to be delivered via cloud computing technology (the "Conduit patent application").[30] Around the same time, Shilo, Erez, and Bilezyk founded Conduit Ltd. to allow web publishers to build customized toolbars using their technology.[31] As one author wrote about Conduit's business:

> The browser toolbar concept has been around for quite a while – Yahoo and Google have been distributing them for the better part of a decade – but Conduit's approach is unique in a few key ways:
>
> 1. **It's a platform.** This isn't a single product you download; it's a set of tools that anyone can use to make their own version.
> 2. **It's dynamic.** Content publishers can push layout changes to their toolbars, keeping them fresh.
> 3. **It's a marketplace.** Toolbar publishers can pay each other to distribute content or marketing messages, giving the platform a potentially powerful economic engine.[32]

Just like the customized toolbars and browsers offered via the NEAT!™ Software, Conduit's customized browser toolbars are also dynamic (i.e., automatically and transparently upgraded) and can be used as a marketplace (i.e., tracking information to be used by advertisers to target key audiences).

16. Conduit describes its 'toolbar platform' as a "cloud-based toolbar and app generation platform, which allows for the creation, implementation and administration of web browser toolbars for distribution by publishers to targeted audiences. The Toolbar Platform

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[30] U.S. Patent Application No. 11/053,662, filed with the PTO on February 9, 2005.

[31] *See* Steve Cooper, "Conduit Builds on the Power of the Web," January 2, 2009, TheStreet.com, 11/14/13 printed copy attached as **Exhibit "I."** Found at: http://www.thestreet.com/print/story/10455713.html.

[32] Jon Fortt, "Browser toolbars are back", June 3, 2010, CNNMoney, 11/14/13 printed copy attached as **Exhibit "J."** Found at: http://tech.fortune.cnn.com/2010/06/03/the-underground-internet-economy/.

includes, without limitation, software applications and tools that provide comprehensive solutions for the full customization of toolbar GUI, features and services…."[33] Conduit's focus on a cloud based delivery of its customized toolbar offering appears to differentiate the two product offerings. But when the MyMail Inventors launched NEAT!™ Software in October of 1996, the term of art 'cloud computing' had not yet been popularized.[34] Regardless the MyMail Inventors had envisioned and reduced to practice their invention to be delivered via the Internet.[35] In short, Conduit's ClientConnect business is based entirely upon the same process that the MyMail Inventors conceived of and sought to patent almost a decade before the founders of Conduit did.

17. From Conduit's patent application, U.S. Patent No. 7,870,109, entitled "Method and System for Use with the Internet," issued on January 11, 2011 (the "'109 patent"). Conduit Ltd. is the assignee of the '109 patent. The description of the alleged invention of Conduit's '109 patent reads much like the invention claimed in the '863 patent:

> **Conduit's '109 Patent**:
>
> The client software periodically sends the hosting server a request to check for updates (block **605**), comparing the current version of the toolbar at the user with the most updated version at the server (block **606**). This can be done each time the user activates the toolbar. If the version is not the same (block **607**), the toolbar updates notifier **116** (Fig. **1**) at the hosting server. Notifier sends the toolbar update in XML based message to service communicator **125** (block **608**), and the client software updates the toolbar look and functionality (block **609**) [col. 7, lines:36-35]

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[33] *Perion Form 6-K*, at Proxy, at Proxy, p. 52 **Exhibit "A."**

[34] In the industry, some have credited the arrival of Salesforce.com offering in 1999 as having "pioneered the concept of delivering enterprise applications via a simple webite. The services firm paved the way for both specialist and mainstream software firms to deliver applications over the internet." Arif Mohamed, "A history of cloud computing," March 2009, ComputerWeekly.com, 11-14-13 printed copy attached as **Exhibit "K."** Found at: http://www.computerweekly.com/feature/A-history-of-cloud-computing.

[35] "To begin the process of the present invention, the user **110** installs (downloads) a client dispatch application program …" '863 Patent, at col. 6, lines: 31-32, **Exhibit "H."**

MyMail's '863 Patent:

> Software responsive to the button bar database **208**, for displaying the Toolbar in accordance with data in the button bar database **208**, may be provided as part of a network browser. The Toolbar of the present invention has some unique properties as it can be dynamically changed or updated via a Pinger process….[col. 10, lines: 12-17]
>
> The Pinger entity, as suggested above, has, as one of its functions, the responsibility of providing database updates to the client user…. [col. 10, lines: 30-32]
>
> The pinger is initiated by the client dispatch application upon connection to the network **100**. The client dispatch application **200** transmits header information to access server **106** using the IP address of the access server **106**. The header information includes… database (**204, 206, 208, 210**) revision levels, and client dispatch application **200**(block **605**) and other related software revision levels. With this information, the access server **106** determines whether a user **110** … needs a database or file update. [col. 12, lines: 16-28]

While the language used to describe and claim the invention is slightly different in the two patents, the method is the same. Conduit's claim to the invention, however, is invalidated by the '863 patent that dates back to June of 1997.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,275,863

18. As the Assignee of the '863 patent, Plaintiff MyMail owns the entire right, title, and interest in and to the '863 patent, including the sole right to sue for its past and present patent infringement.

19. Defendants' toolbar platform (e.g., Conduit's ClientConnect business) employs the method covered by one or more claims of the '863 patent, or a method that is substantially similar to one or more claims of the '863 patent under the doctrine of equivalents, in order to produce and maintain infringing customized toolbars; and thus, they infringe one or more claims

of the ’863 patent. (All processes and/or resulting customized toolbars covered by this paragraph are collectively referred to as “Accused Products”).

20. MyMail is informed and believes, and thereon alleges, that the applicable requirements of 35 U.S.C. § 287 are not applicable as the ‘863 patent covers a method. *Crown Packaging Tech., Inc. v. Rexam Beverage Can Co.,* 559 F.3d 1308, 1316 (Fed. 2009).

21. MyMail is informed and believes, and thereon alleges, that Defendants have infringed, and continue to infringe, one or more claims of the ’863 patent, in violation of 35 U.S.C. § 271(a) and/or (g) by, among other things, making, using, offering to sell, selling and/or importing in and/or into the United States, the Accused Products without authority or license from MyMail.

22. Defendants’ acts of infringement have caused and will continue to cause substantial and irreparable damage to MyMail.

23. As a result of Conduit’s infringement of the ’863 patent, MyMail has been damaged; and therefore, it is entitled to recover damages pursuant to 35 U.S.C. § 284 in an amount that presently cannot be pled, but that will be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MyMail, Ltd. respectfully prays that this Court enter judgment against each Defendant as follows:

A. That Defendants infringed the ’863 patent under 35 U.S.C. § 271(a) and/or (g);

B. That Defendants provide to MyMail an accounting of all gains, profits and advantages derived by each Defendant’s infringement of the ‘863 patent, and that MyMail be awarded damages in accordance with 35 U.S.C. § 284 to compensate it adequately for the wrongful infringement by each Defendant;

C. That MyMail be awarded any other damages, costs, and interest on its damages, including but not limited to, attorney fees available under 35 U.S.C. § 285.

D. That the Court permanently enjoin Defendants and all those in privity with them from making, having made, selling, offering for sale, distributing and/or using processes that infringe the ’863 patent to produce and/or providing the resulting customized toolbars (the Accused Products) in the United States; and

E. That MyMail be awarded such other and further relief as this Court may deem just and proper, including but not limited to equitable relief and all remedies available at law.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff MyMail, Ltd. hereby demands a trial by jury on all issues triable to a jury.

Dated: November 14, 2013

Respectfully submitted,

MYMAIL, LTD

By and through its attorneys,

/s/ Eve L. Henson

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